

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

ALBERT LEE, et al.,

Plaintiffs,

vs.

No. 1-06-CV-057298

PALM TERRACE, LLC, a Nevada
Limited Liability Company,
etc., et al.,

Defendants.

DEPOSITION OF ANDREW J. HANTGES

Los Angeles, California

Friday, October 12, 2007

Volume 1

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EXHIBIT B

ANDREW J. HANTGES

10/12/07

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Defendants.

Deposition of ANDREW J. HANTGES, Volume 1,
taken on behalf of Defendants, at 515 South Flower
Street, Los Angeles, California, beginning at 10:57
a.m. and ending at 5:30 p.m. on Friday, October 12,
2007, before GINA CANGIAMILA, Certified Shorthand
Reporter No. 10256.

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ANDREW J. HANTGES

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ANDREW J. HANTGES

10/12/07

1 Los Angeles, California, Friday, October 12, 2007

2 10:57 a.m. - 5:30 p.m.

3
4 ANDREW J. HANTGES,

5 having been first administered an oath, was examined and
6 testified as follows:

7
8 EXAMINATION

9 BY MR. McMAHON:

10 Q. Please state your full name for the record.

11 A. Andrew Joseph Hantges.

12 Q. Mr. Hantges, have you had your deposition taken
13 before?

14 A. Yes, I have.

15 Q. What was the general nature of that? How many
16 depositions have you participated in?

17 A. I've had two.

18 Q. What was the general nature of the first of
19 those depositions? What was the topic?

20 A. Topic was with regard to my previous
21 employer.

22 Q. What employer was that?

23 A. That was USA Capital.

24 Q. Was USA Capital a defendant in that case?

25 A. I cannot answer that with certainty, but I was

1 same degree of seriousness. Do you understand?

2 A. Yes.

3 Q. Is there any reason you cannot give me your
4 best testimony today? For example, are you on any
5 medication that might affect your memory?

6 A. No, I'm not.

7 Q. Finally, I ask that you don't guess. If you
8 have absolutely no knowledge or no reason to base your
9 answer on, please just tell me you don't know, and then
10 we can move on. Do you understand?

11 A. I do.

12 Q. I'm going to be asking you questions today
13 about a piece of property known as the Palm Terrace
14 Apartments. Are you familiar with these apartments?

15 A. Yes, I am.

16 Q. Why are you familiar with the Palm Terrace
17 Apartments?

18 A. I was the mortgage broker on that transaction.

19 Q. It's my understanding that Palm Terrace is
20 divided into separate buildings, each with a different
21 owner; is that accurate?

22 A. That is accurate.

23 Q. Were you the mortgage broker for each of these
24 individual investors?

25 A. Yes.

1 Q. I want to start with just a bit of your
2 background.

3 What is your present employer?

4 A. Access Commercial Mortgage.

5 Q. What is your position at Access Commercial
6 Mortgage?

7 A. Co-founder.

8 Q. When was Access Commercial Mortgage founded?

9 A. Approximately one year ago.

10 Q. What type of business is Access Commercial
11 Mortgage?

12 A. Commercial mortgage broker.

13 Q. Where is Access Commercial Mortgage located?

14 A. In Henderson, Nevada.

15 Q. Do you have an ownership interest in Access
16 Commercial Mortgage?

17 A. Yes.

18 Q. Do you have any partners in that business?

19 A. Yes, one other.

20 Q. What is your other partner's name?

21 A. Devin Lee.

22 Q. How many employees does Access Commercial
23 Mortgage have?

24 A. Two.

25 Q. Would that be you and Mr. Lee?

ANDREW J. HANTGES

10/12/07

1 A. No.

2 Q. All right. So, you have two in addition to you
3 and your partner?

4 A. Yes.

5 Q. Where were you employed prior to Access
6 Commercial Mortgage?

7 A. USA Capital.

8 Q. What were the dates of your employment with USA
9 Capital?

10 A. Approximately August 2000 until one year ago.

11 Q. What was your position at USA Capital?

12 A. There was no official title, but I was a
13 commercial mortgage broker.

14 Q. Did you have an ownership interest in USA
15 Capital?

16 A. No.

17 Q. Do you know who did own USA Capital?

18 A. I could not say with certainty, so I cannot
19 answer.

20 Q. I've also seen reference in documentation to
21 USA Commercial Mortgage. Are you familiar with that
22 entity?

23 A. Yes, I am.

24 Q. What is that business?

25 A. To the best of my knowledge, they're one and

1 the same.

2 Q. Prior to USA Capital where were you employed?

3 A. College.

4 Q. Which leads into my next questioning. Where
5 did you attend college?

6 A. University of Nevada Reno.

7 Q. Did you get a degree from UNR?

8 A. Yes, I did.

9 Q. What degree is that?

10 A. Finance.

11 Q. When did you graduate from UNR?

12 A. Around August 2000.

13 Q. Do you hold any other degrees?

14 A. Degrees, no.

15 Q. Do you have any real estate licenses?

16 A. Yes.

17 Q. What are those licenses?

18 A. I do have a real estate license.

19 Q. Is that -- sorry. Is that an agent or a broker
20 or a salesperson?

21 A. I am now a broker.

22 Q. When did you become a broker?

23 A. Approximately one year ago.

24 Q. Did you have to take any courses to obtain your
25 broker's license?

1 updates, if tenants had moved vacated or anything of the
2 like.

3 Q. Did she, in fact, provide you with those
4 updates?

5 A. She did.

6 Q. How were those updates transmitted to you?

7 A. Typically via fax.

8 Q. And during this process, how often did she
9 update you with regard to the rent at Palm Terrace?

10 A. Occasionally.

11 Q. Do you have a ballpark of how many updates she
12 gave you? Are we talking hundreds or --

13 A. We're talking under a dozen. A dozen or
14 under.

15 Q. Were these updates from Penny something that
16 you specifically requested her to provide you with?

17 A. Yes.

18 Q. How did you ask Penny to provide you with
19 updates with regard to the rent at Palm Terrace?

20 A. To the best of my knowledge, I faxed her over
21 the rental forms that the bank required, and asked her
22 to review them for accuracy.

23 MR. HALEY: Before we get into documents, let's
24 take a quick break.

25 MR. McMAHON: Sure.

1 (Recess.)

2 (Deposition Exhibit 1 marked.)

3 MR. McMAHON: Back on the record.

4 We've marked as Exhibit 1, some documents with
5 the title "Multifamily Rent Roll."

6 Q. Mr. Hantges, do you recognize these
7 documents?

8 A. I do.

9 Q. Do you recognize these documents?

10 A. This is LaSalle Bank's standard rental rolls.

11 Q. And are these the rent rolls, if you can just
12 flip through -- first can you just flip through these
13 and verify that that's your signature on the bottom,
14 where it says "Broker"?

15 A. Okay.

16 Q. Is that your signature?

17 A. That is.

18 Q. These are rent rolls on LaSalle Bank's form for
19 each of the buildings for the plaintiffs in this
20 particular case; is that correct?

21 A. Yes.

22 Q. What is the purpose of this rent roll?

23 A. To outline who is currently occupying the
24 unit.

25 Q. Did someone at LaSalle Bank provide you with

1 this form of rent roll?

2 A. Yes.

3 Q. Do you know who it was that did that?

4 A. No.

5 Q. Was this form something that you had in your
6 files because of previous dealings with LaSalle Bank, or
7 was this sent out specifically for this transaction?

8 A. This was not specifically for this transaction.
9 This is a rent roll used for every deal that they did
10 during these years.

11 Q. There's various information contained in this
12 form with regard to the tenant's name and the current
13 rent in place, et cetera. Who provided you -- or strike
14 that.

15 Who filled out this form?

16 A. Me.

17 Q. Where did you get the information to fill out
18 this form?

19 A. It was provided to me.

20 Q. Who provided you with that information?

21 A. Either Carol Gray or Penny Trombi.

22 Q. I guess then we should just walk through all
23 the information contained here.

24 Do you see the column where it says "Tenant's
25 Name"?

1 A. It's been years, but they look familiar.

2 Q. And it looks like there are some handwritten
3 notes on the rent rolls; is that correct?

4 A. That is correct.

5 Q. Do you know what these handwritten notes
6 represent?

7 A. That represents changes I was told to make to
8 the rent roll forms.

9 Q. And was this -- you testified earlier, correct,
10 about Penny Trombi providing with you updates; is that
11 right?

12 A. Yes.

13 Q. Would this be one of those updates that you
14 were talking about?

15 A. This is an update, yes.

16 Q. Was this something that you specifically
17 requested from anyone, or did this come unsolicited to
18 you?

19 A. This was in response to Exhibit 3, when I said,
20 have a reliable person review these for accuracy, is
21 what I believe.

22 Q. If you can look at the handwritten notes that
23 are on the rent rolls, do you know who actually made
24 those notations?

25 A. I don't.

1 Q. Throughout your years of dealing with processes
2 like these, what is typical in this situation of who
3 updates the rent rolls?

4 A. It ranges from property managers to borrowers
5 themselves.

6 Q. Do you recall having any specific conversations
7 with anyone about the changes that are reflected here in
8 these rent rolls?

9 A. Conversation, no.

10 Q. And what did you then do with the information
11 that was being provided to you with regard to changes in
12 the rent rolls?

13 A. I made the updates, and then disseminated the
14 new forms to the plaintiffs for their approval.

15 MR. McMAHON: Let's go ahead and mark this as
16 Exhibit 5.

17 (Deposition Exhibit 5 marked.)

18 MR. McMAHON: And then at the same time, this as
19 Exhibit 6.

20 (Deposition Exhibit 6 marked.)

21 MR. McMAHON: And one more, Exhibit 7.

22 (Deposition Exhibit 7 marked.)

23 MR. McMAHON: We've just marked as Exhibits 5, 6
24 and 7, three separate e-mails with attachments.

25 If you can flip through these e-mails and

1 attachments, and let me know if you recognize them.

2 THE WITNESS: I do.

3 BY MR. McMAHON:

4 Q. What are these e-mails?

5 A. These are e-mails with rent rolls.

6 Q. You mentioned earlier when we were looking at
7 Exhibit 4, that you updated the rent rolls based on the
8 handwritten notes that were in the rent rolls in Exhibit
9 4; is that correct?

10 A. I updated rent rolls, yes. I'd have to compare
11 the documents specifically to say those were the
12 specific forms I updated to these forms. It's been two
13 or three years. There's a lot of fax copies and e-mails
14 coming my way.

15 Q. So we can sort of verify that, if you look at
16 the document or the page in Exhibit 4 that's Bate
17 stamped 17397 --

18 A. Yep.

19 Q. -- and then if you go to Exhibit 7, which is
20 the rent rolls e-mail, and if you turn to the last page
21 of that document --

22 A. Okay.

23 Q. -- now, comparing the two, these are both for
24 the Nash's building at 2417 Wengert; is that right?

25 A. Yes.

1 Q. And then if we look at 17397 in Exhibit 4, do
2 you see the handwritten notes where it says "Aquino" and
3 "Ceballos"?

4 A. I do.

5 Q. And then if we look at Exhibit 7, you see in
6 the last page of that exhibit, that Ceballos and
7 Esquedo, I guess, I pronounced that wrong, are now
8 reflected in that rent roll in Exhibit 7; is that
9 right?

10 A. I see that.

11 Q. So, looking, then, at comparing these two
12 documents, is it safe to say that you took the
13 handwritten information from Exhibit 4, and then updated
14 it in the rent rolls that we are looking at in Exhibits
15 5, 6 and 7?

16 A. As of today, yes.

17 Q. Okay. The e-mail in 5, 6 and 7, you're sending
18 these rent rolls to Cathi Ciardella; is that correct?

19 A. Yes.

20 Q. And why were you sending these to Cathi
21 Ciardella?

22 A. To the best of my knowledge, and looking at the
23 time line of this as of today, this appears to be the
24 bank asking us for some final updated rent rolls before
25 they moved to closing.

1 Q. So, then, these rent rolls that you were giving
2 to Cathi were then going to be given to the borrowers
3 for their signature; is that right?

4 A. For their approval, yes.

5 Q. And just to clarify, when we look back at
6 Exhibit 1, these were the signed rent rolls from May?

7 A. Yes.

8 Q. Were these then submitted to the bank?

9 A. Oh, yes.

10 Q. And is that done all as one package, or as you
11 get this information in, are you then sending them to
12 the bank?

13 A. The package goes out up front, and then as you
14 go, if they ask for further information, they'll send it
15 piecemeal or whatever you must do.

16 Q. Okay. So, just so I can get a clear view of
17 the picture, you initially would have sent the May rent
18 rolls in Exhibit 1, then you got more information with
19 regard to people moving in and out, and then you were
20 going to send them an updated one later on; is that
21 correct?

22 A. That is correct, yes.

23 Q. Okay. Other than the changes to the rent rolls
24 that were handwritten in Exhibit 4 --

25 A. Yes.

1 Q. -- was there any other information that you
2 relied on when you filled in the data on the rent rolls
3 in Exhibits 5, 6 and 7?

4 A. I couldn't say as of today.

5 MR. McMAHON: Let's mark this as Exhibit 8.

6 (Deposition Exhibit 8 marked.)

7 MR. McMAHON: We've marked as Exhibit 8 some
8 Multifamily Rent Rolls.

9 Q. Do you recognize these documents?

10 A. Yes.

11 Q. And is that your signature there, where it says
12 "Broker" on the bottom of each of these rent rolls?

13 A. Yes.

14 Q. What are these particular rent rolls?

15 Let me rephrase that.

16 When we looked at Exhibits 5, 6 and 7, you were
17 sending blank forms out to be signed, and then the
18 borrowers signed them and sent them back to you. Is
19 this what you received -- is Exhibit 8 what you received
20 back from the borrowers?

21 A. It's been a long time.

22 Q. So you don't know?

23 A. It appears that way with the signatures, yes.

24 Q. Okay. If we look here at the first page of
25 Exhibit 8, do you see that it appears that there is one

1 previous twelve months, so that actually that figure
2 right there was taken from the previous appraisals for
3 Imperial Bank and the sub-market, which you could, in
4 banker lingo, consider market vacancy.

5 Q. So, that 95 percent then didn't represent the
6 actual occupancy rate; is that correct?

7 A. Over the preceding twelve months, are you
8 referring?

9 Q. Correct.

10 A. Yes, it couldn't have. Everyone in the
11 transaction was aware that the property had been closed
12 and --

13 Q. In the past, had you ever encountered something
14 like this, where the property had been closed and vacant
15 for a period of time, and then you had to fill in the
16 information with regard to occupancy?

17 A. No.

18 Q. Did you discuss with anyone the decision to use
19 the market data from the appraisals as that 95 percent
20 figure?

21 A. With the investor, which would be the bank.

22 Q. Do you recall who you spoke with at the bank
23 with regard to using that 95 percent figure?

24 A. I do not.

25 Q. Did you talk about that 95 percent figure with

1 Carol Gray?

2 A. No.

3 Q. Other than the person at the bank that you
4 spoke with about the 95 percent figure, did you talk
5 about it with anyone else?

6 A. No.

7 MR. McMAHON: Let's mark that as Exhibit 9.

8 (Deposition Exhibit 9 marked.)

9 MR. McMAHON: We've marked as Exhibit 9 some
10 documents titled "Income and Expense Statement."

11 Q. Can you just flip through these forms, and
12 verify that that's your signature there where it says
13 "Broker's Signature"?

14 A. Yes, it is.

15 Q. What is this particular document?

16 A. This is a LaSalle Bank form, which
17 unfortunately was required for this transaction, but
18 what this form is is an income and expense statement
19 that shows historical income expense and the mortgage
20 payment for that calculation that I showed you that we
21 spoke about earlier with regards to if a property would
22 qualify.

23 Q. Was this form something that LaSalle Bank
24 provided you specifically for Palm Terrace, or is this
25 something that you already had because of previous

1 dealings with the bank?

2 A. This form, as the rent roll, was used on every
3 deal they probably did in the three year period.

4 Q. If you see there under the column in Exhibit 9,
5 where it says "Broker Analysis Based on Actual Income,"
6 do you see that column?

7 A. I do.

8 Q. And there's various figures there listed in
9 that column. Who filled in this information?

10 A. That would be myself, the broker.

11 Q. And where did you get these figures to fill in
12 this information?

13 A. These figures, the expenses, as we spoke about,
14 was from a previous appraisal from Imperial Bank, and
15 also reviewing comparables in the sub-market, the income
16 was estimated based upon rent rolls, which we discussed,
17 and the other income was also that laundry figure that
18 we spoke about, too.

19 So up until this point, you've been given and
20 asked me all three elements of this sheet that we've
21 discussed.

22 Q. When you say previous appraisals from Imperial
23 Bank, which appraisals are you talking about there?

24 A. They should have a copy, but it was the ones
25 that Carol Gray submitted to me up front.

1 copy of these appraisals?

2 A. No.

3 Q. There's just one figure back on Exhibit 9 that
4 I want to get a little clarity on. The first line item
5 there says "Vacancy and Collection Percentage." Do you
6 see that?

7 A. Yes.

8 Q. And it says five percent. Do you see that?

9 A. I do.

10 Q. Do you know where that five percent came
11 from?

12 A. That five percent, which corresponds to the
13 rent roll, was the estimate to everyone in the
14 transaction's knowledge of what is market in that
15 area.

16 MR. McMAHON: Let's mark this as Exhibit 12.

17 THE WITNESS: May I back up just one second to
18 refer to the question you just asked on Exhibit 11, or
19 on -- go to 9.

20 MR. McMAHON: Sure.

21 THE WITNESS: If you go back to USA 1002, you will
22 notice on the left-hand side, 102, that appraiser used
23 five percent less forecasted vacancy and collection
24 loss. So that's potentially where that number came
25 from, also.

1 MR. McMAHON: Okay.

2 THE WITNESS: Thanks.

3 MR. McMAHON: Let's mark that as Exhibit 12.

4 (Deposition Exhibit 12 marked.)

5 BY MR. McMAHON:

6 Q. We marked as Exhibit 12 a Collateral
7 Information Questionnaire. Can you go through this, and
8 just verify that that is your signature under where it
9 says "Broker" for each of these?

10 A. Yes, they are.

11 Q. What is this document?

12 A. This is, as you'll notice with these documents
13 I refer to LaSalle Bank, but -- and a number of these
14 documents, where it says "Multifamily Finance Group" on
15 top, it's LaSalle Bank MFG, and MFG is the Multifamily
16 Finance Group.

17 So to answer your question specifically, this
18 is a questionnaire that -- one of the forms that they
19 required to get a mental snapshot of the property.

20 Q. So this is a LaSalle MFG form; is that right?

21 A. Yes.

22 Q. You'll see here there are check boxes "Yes" and
23 "No"; is that right?

24 A. I do.

25 Q. Who checks these particular boxes with regard

1 to all of these seventeen items?

2 A. That would be I.

3 Q. Where did you get the information to check
4 these particular boxes?

5 A. I don't recall.

6 Q. I just want to go through a few of the specific
7 items. Do you see number 9, where it says, "Does the
8 property have subsidized rental (Section 8)
9 occupancy"?

10 A. Yes.

11 Q. And the -- strike that.

12 Did you check then the box "No" with regard to
13 that item?

14 A. Looking at the document, it appears so.

15 Q. Do you know where you get that information,
16 that it did not have Section 8 occupancy?

17 A. Do I recall where I received the information?
18 Either through Carol Gray or Penny Trombi.

19 Q. If you look back at Exhibit 2, the first
20 page --

21 A. Yes.

22 Q. -- if you look at the line corresponding on
23 this first page, which is the one for 2401 Wengert
24 Avenue, do you see the notation on the very right, where
25 it appears that one of the units is waiting on Section 8

1 ever see this particular registration form?

2 A. It's not a form for the borrowers. It's a. --

3 MR. HALEY: Just answer his question.

4 THE WITNESS: I'm sorry. Say that again.

5 BY MR. McMAHON:

6 Q. Do you know if any of the borrowers saw this
7 particular form?

8 A. No.

9 Q. What did you do after filling out and signing
10 all but the first one of these forms?

11 A. Submitted to LaSalle Bank.

12 Q. Did you show this form to anyone else other
13 than LaSalle Bank?

14 A. No.

15 Q. If you look at the second page and then the
16 subsequent pages, it appears that you signed this either
17 on June 15 or June 16 of '05; is that correct?

18 A. That is correct.

19 Q. Would you then have provided this to LaSalle
20 Bank shortly thereafter?

21 A. Uh-huh. Yes, I would have.

22 Q. Do you know what LaSalle Bank does with this
23 particular form?

24 A. I do not.

25 MR. McMAHON: Let's take a quick break real quick.

1 (Recess.)

2 (Deposition Exhibit 32 marked.)

3 MR. McMAHON: Back on.

4 We just marked as Exhibit 32 what appear to be
5 Letters of Interest for each of the buildings at Palm
6 Terrace.

7 Q. If you can just flip through this document, and
8 verify that that's your signature on the last page of
9 each of these Letters of Interest.

10 A. Yes.

11 Q. What is this particular Letter of Interest that
12 we're looking at here in Exhibit 32?

13 A. It details the specifics of the loan for the
14 clients.

15 Q. You testified earlier that after you went
16 through the underwriting process and determined that you
17 would actually then issue a Letter of Interest; is that
18 right?

19 A. Yes.

20 Q. Is that, is this document here that we're
21 looking at, Exhibit 32, that Letter of Interest that we
22 were looking at earlier?

23 A. Yes, sir.

24 Q. Who drafted the Letters of Interest that are
25 here in Exhibit 32?

1 A. That would be me.

2 Q. You mentioned earlier that the loan origination
3 fee is negotiated with the borrowers; is that correct?

4 A. Yes.

5 Q. Here on this first Letter of Interest, it says
6 the loan origination is to be two percent of the loan
7 amount to Catalyst Funding; is that right?

8 A. That's what it appears so, yes.

9 Q. Do you know if that two percent was actually to
10 Catalyst Funding?

11 A. I can't say.

12 Q. It also says here on this first Letter of
13 Interest "Zero percent of loan amount to USA Commercial
14 Mortgage"; is that correct?

15 A. Yes.

16 Q. If we look back at Exhibit 28, it appears that
17 there was an origination fee paid with respect to these
18 loans; is that correct?

19 A. That is.

20 Q. So, am I right in saying that it appears that
21 this Letter of Interest here, Exhibit 32, at least with
22 regard to the loan origination payment, it doesn't match
23 what was in the final statement?

24 A. That would be correct.

25 Q. Do you know what happened in between the Letter

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby certify:


3 That the foregoing proceedings were taken
4 before me at the time and place herein set forth; that
5 any witnesses in the foregoing proceedings, prior to
6 testifying, were duly sworn; that a record of the
7 proceedings was made by me using machine shorthand
8 which was thereafter transcribed under my direction;
9 that the foregoing transcript is a true record of the
10 testimony given.

11 Further, that if the foregoing pertains to
12 the original transcript of a deposition in a Federal
13 Case, before completion of the proceedings, review of
14 the transcript [] was [] was not requested.

15 I further certify I am neither financially
16 interested in the action nor a relative or employee
17 of any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date
19 subscribed my name.

20
21 Dated: NOV 05 2007

22
23 
24 GINA CANGIAMILA
25 CSR No. 10256